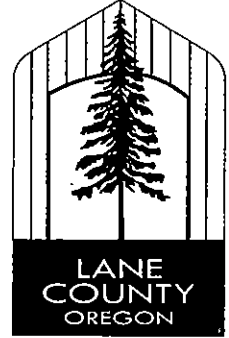


W. 12-b.



**AGENDA COVER MEMO**

**DATE: JUNE 25, 2003, Meeting Date**  
**TO: BOARD OF COUNTY COMMISSIONERS**  
**FROM: KENT HOWE, PLANNING DIRECTOR & JEFF TOWERY, MANAGER. LAND MANAGEMENT DIVISION**

LAND MANAGEMENT DIVISION  
[http://www.LaneCounty.org/PW\\_LMD/](http://www.LaneCounty.org/PW_LMD/)

**AGENDA ITEM TITLE: REPORT BACK / Limitation on LMD Planning Director's Discretion**

**I. MOTION:**

NO MOTION NECESSARY AS THIS IS A DISCUSSION ITEM ONLY.

**II. ISSUE OR PROBLEM**

A request has been made to have a discussion with the Board on June 25th regarding the Planning Director's discretion to waive referral notice of applications. This memo explains why we decided to waive referral notice.

**III. DISCUSSION**

**A. BACKGROUND**

Since Thanksgiving, we have been short staffed in application processing by two positions. A significant backlog of applications accrued and in February we hired extra help to catch up. When applications languish, the system breaks down and puts the County at risk. As explained in a recent letter to Robert Emmons (attached), a triage approach was taken, which included a thoughtful and deliberate determination of specific applications that might be processed without referral notice. We felt we were in a critical situation of trying to meet customer expectations about permit turn around time while at the same time struggling with the growing backlog pushing us up against the statutory processing timelines. Therefore, in order to maximize the extra help, we opted to dispense with a single county-designed aspect of the process at the front end by not sending referral

notice and adhere to the statutory notice requirements at the end of the process for eleven applications out of approximately 150.

## **B. ANALYSIS**

The applications we identified to process without referral notice were relatively straightforward, unlikely to be controversial and created relatively low legal risks (see attached). These were primarily requests for extensions of expiring approvals, temporary hardship dwellings, and co-location of telecommunication facilities at remote sites.

The Planning Director has limited administrative discretion. For example, applications may be taken out of order (see letter from Bill Kloos) or fees may be reduced or waived sometimes when circumstances meet provisions of LM 60.850(2). (Attached)

It has not been our past policy or practice to waive the referral notice. It was a unique staffing situation resulting from a retirement and a budget shortfall. It will not happen again without checking in with the Board if circumstances warrant. Everyone that would have been given referral notice was notified of the land use decisions, was given an opportunity to appeal the decisions and could fully prepare/comment on the applications in appeal proceedings. Had anyone appealed or expressed concerns and asked, appeal fees could have been waived. All of the decisions met the statutory requirements for providing notice and an opportunity for a public hearing. None of the decisions received any comments during the appeal period. None of the decisions were appealed.

## **C. ALTERNATIVE/OPTIONS**

1. Informally recognize that referral notice will not be waived without checking in with the Board if circumstances warrant
2. Take no position.

## **IV. RECOMMENDATION**

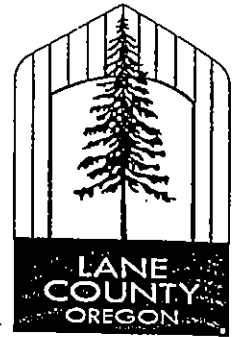
Alternative 1.

### **ATTACHMENTS (not sent electronically):**

1. May 14 letter to Robert Emmons
2. List of eleven applications referral notice waived
3. April 4 email from Stephen Vorhes
4. May 5 letter from Bill Kloos
5. Lane Manual 60.850(2)

May 14, 2003

Robert Emmons, President  
LandWatch Lane County  
P.O. Box 5347  
Eugene, Oregon 97405



LAND MANAGEMENT DIVISION  
[http://www.LaneCounty.org/PW\\_LMD](http://www.LaneCounty.org/PW_LMD)

**Subject: Land Watch Letter dated April 1, 2003**

Dear Mr. Emmons,

Your letter of April 1, 2003 raised four general areas of concern as follows: 1) referral notice; 2) processing of land use applications for the McDougal and Stein properties; 3) hiring of extra help to process backlog of applications; and 4) Public Records Request. After having a conversation with Kent Howe, Planning Director, the following brief response provides a status of these four general areas of concern.

**1) Referral Notice**

Eleven applications were processed without referral notice in order to maximize the extra help processing a backlog of applications. Staff assisted in identifying the applications that were relatively straight forward and unlikely to be controversial to process without referral notice. These were primarily requests for extensions of expiring approvals, temporary hardship dwellings, and co-location of telecommunication facilities on remote mountain tops.

Your letter mentioned that 1000 Friends of Oregon received a phone call from an individual inquiring about a notice of pending approval and why he had not received a referral notice. Kent called Lauri Segel and was given the name of the individual that had inquired about the referral notice. He called the person and explained what had happened. The individual was interested in the provision utilized in the land use application and he was fine with the decision.

Everyone that would have been given referral notice was notified of the land use decisions and were given an opportunity to appeal the decisions and fully prepare/comment on the applications in the appeal proceedings. All of the decisions met the statutory notice requirements for providing opportunity for a public hearing. None of the decisions received any comments. None of the decisions were appealed.

**2) Processing of land use applications for the McDougal and Stein properties**

Your inquiries on these land use applications were addressed in Kent's letter to you dated March 5, 2003. These applications are being processed and further debate should occur in the context of those land use proceedings. As with previous correspondence, because your letter went to the Commissioners and may constitute an ex parte contact, I will put it and my reply in the respective planning action files.

**3) Hiring of extra help to process backlog of applications**

Your concerns about hiring Jim Mann were also addressed in Kent's letter to you dated March 5, 2003. Your allegations regarding Jim Mann's association with Lane Plywood are misinformed



and distract from your efforts on behalf of LandWatch and those you represent. I have attached Jim Mann's response to your assertions.

**4) Public Records Request**

Your request for notice of pending applications was addressed by Stephen Vorhes, Assistant County Counsel, on April 7, 2003. I have attached his response. It is my understanding a formal response has not been received. We are also waiting to hear your preference for interim notice before the subscription service becomes effective.

In conclusion, I understand that Kent has stated in person and on the phone, to both you and Lauri Segel, that we are willing to meet with you to talk about broad planning issues and concerns. I was surprised to see your letter of May 6, 2003, stating that we indicated we would not meet to address the April 1st letter.

I have talked with Ollie Snowden, Director of Public Works, and we do feel that the back and forth letter writing is not a productive use of Kent's time. Kent has talked individually to all of the Board members about your April 1st letter. In fact, Commissioner Sorenson has recommended that meeting with additional members of the group might be a reasonable way to proceed rather than meeting with one individual. We continue to offer to meet at a mutually convenient time to address your general interests.

Sincerely,



Jeff Towery  
Acting Division Manager

Enclosures

cc: Bill VanVactor  
Ollie Snowden  
Kent Howe  
Steve Vorhes  
Commissioners Dwyer, Green, Lininger, Morrison and Sorenson  
Lauri Segel, 1000 Friends of Oregon

# APPLICATIONS FOR WHICH NO PRE-NOTICE WAS SENT

PA #	Type of Application	Applicant	Planner	Date Received
02-6236	EFU SUP - personal airport	Greer	Mann	12-10-02
02-6234	EFU temp hardship MH	Harrold	Mann	12-6-02
03-5046	EFU woodlot dwelling	LPC (Evans)	Mann	1-13-03
02-6276	Cell co-location	Durbin AT & T	Mann	12-17-02
03-5135	EFU temp hardship	None	Mann	2-12-03
02-6275	Cell co-location	Morgan AT & T	Mann	12-17-02
02-6126	F-2 Template	McDougal	Mann	11-06-02
02-6235	EFU family farm help dwelling	Neel Assoc.	Mann	12-17-02
02-6125	F-2 Template	Land Planning Consultants	Mann	11-6-02
03-5107	Cell antenna co-location		Mann	2-4-03
03-5117	Cell antenna co-location	AT & T	Mann	2-5-03

**HOWE Kent**

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**From:** VORHES Stephen L  
**Sent:** Friday, April 04, 2003 7:31 PM  
**To:** HOWE Kent  
**Cc:** SNOWDEN Oliver P; TOWERY Jeffrey R  
**Subject:** LandWatch letter

The attached document is my first cut at a letter to LandWatch to let them know what will need to happen before we start making copies of the notices that were requested. I think this should take care of that part of the latest letter from LandWatch. Let me know if you see anything that needs revision or clarification. I hope to send it out Monday.

As for the other issues in the letter, I think the legal risks of the lack of referral notice are relatively low. Everyone that would have been given referral notice would have been notified of the planning director decision and would have an opportunity to appeal that decision and fully prepare/comment on the application in the appeal proceeding. I understand from conversation with you, Jeff and the letter prepared by Jim Mann that he was not engaged on behalf of any of the applicants or property owners involved in the applications he reviewed while working for Lane County. I understand you each checked on that before hiring Jim or assigning those files. As for the sequence and timing of actions on those applications, nothing I have seen or heard to date raises significant legal concern from a land use perspective. As I understand the compliance matter that was raised and involves the Stein property, that seems to be a matter awaiting final resolution at the state level. If it is as I understand it, subsequent county action depends upon that resolution. Further debate on actions taken in that matter should probably occur in the context of those proceedings and any application files still awaiting action. Perhaps including a copy of the letters in the file would be sufficient. As for further response to any of the issues or the letter, I think that it may be prudent to leave that to another day and perhaps a different speaker. I would be glad to talk further on that with any of you three or others. Thanks.



LandWatch record  
request lette...

LAW OFFICE OF BILL KLOOS, PC

OREGON LAND USE LAW

576 OLIVE STREET, SUITE 300  
EUGENE, OR 97401  
PO BOX 11906  
EUGENE, OR 97440  
TEL (541) 343-8596  
FAX (541) 343-8702  
E-MAIL BILLKLOOS@LANDUSEOREGON.COM

May 5, 2003

Kent Howe, Director  
Lane County Land Management Division  
125 E. 8<sup>th</sup> Ave.  
Eugene, OR 97401

Re: J.C. Compton McKenzie Bridge Project; PA 03-5045

Dear Mr. Howe:

The administrative approval you issued recently for a temporary operation to mine gravel, crush it, and process it into asphalt in McKenzie Bridge, for use in an ODOT paving project this summer by my client at J.C. Compton, is now final. No one appealed the administrative approval, so the approval is secure, and my client has the approval in time to allow it to efficiently plan the job to be run from the McKenzie Bridge site.

The environmental savings from locating the processing operation in McKenzie Bridge are very significant. The easiest way to quantify them is to realize that about 16,000 highway truck miles will be saved in the valley each day during the eight-week paving project. (That results from a 100-mile round trip savings for each of the 20 trucks per hour that will be serving the paving machines.) In consideration for the extra impacts on the local community in the McKenzie Bridge area, my client negotiated a list of local public works projects it will contribute to the school district and fire districts during the project period. The current list of projects is attached. J.C. Compton will continue to work with the principals to tune up the project list.

My purpose in writing is to thank you for sticking your neck out a bit to make this possible. When my client approached me with the possibility of using the McKenzie Bridge site, it was already January 1. It was clear from his contracting schedule that if the project was to be done from McKenzie Bridge, rather than from town, we had to know for sure by mid-April. Given the length of the processing queue at the County, that meant this application needed to be bumped to the front of the line for processing. I explained the circumstances, and you agreed to expedite the processing, due to the potential environmental benefits. The proposal met all the standards, was fully noticed, and drew many comments and suggestions from neighbors, resource managers, and public interest groups. The comments triggered a supplemental noise study and a list of protective conditions on the final approval. The final decision apparently made good sense, because no appeal was filed.

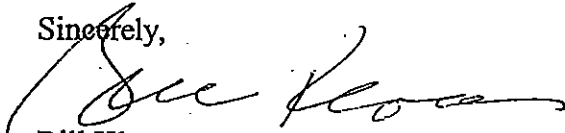
I know you have taken a fair amount of public criticism lately from individuals in the most vocal public interest groups about how the department is run and the judgments you make

Mr. Kent Howe  
May 5, 2003  
Page 2

day to day. It would have been less risky for you to play this one "by the book" and keep this application at its initial place in line, thus ensuring that the paving project would be run from town rather than McKenzie Bridge. But making the kind of judgment you did should be a part of your job description, as decisions like this hold the prospect for great social utility.

Again, thanks for taking a chance on this one. I can only speak for my client, who will be able to do this paving project more quickly and less expensively than if it had to be run from town. I suspect, however, that the school district and fire departments appreciate your initiative, too. The people who will benefit the most, however, likely won't even know what you have done for them. They would be the thousands of people who won't get to experience the hundreds of thousands of truck miles driven on the highway at the peak of the summer season if the job had been run from Springfield.

Sincerely,



Bill Kloos

Encl. Community Projects List, Summary Table  
cc: John Gray, Chief, Upper McKenzie Rural Fire Protection District  
Gene Flint, Chief, Blue River Fire Department  
Ron Hitchcock, Superintendent, McKenzie School District  
Lane County Board of Commissioners  
Jeff Towery, Director, Land Management Division  
Robert Emmons, LandWatch Lane County  
Mike Flanigan, Jr., J.C. Compton Contractors, Inc.

Comptone



60.850 Land Management Division/Department of Public Works. In addition to the fee schedules established in LM 60.850, 60.851, 60.852, 60.853, 60.854 and 60.855, the following policies and applicable charges are established:

(1) Research Fees. In keeping with the provision of LM 60.838, when requests for information with regard to Land Management activities require, in the judgment of the Department Head, or his or her designee, research necessitating the use of staff with specialized or professional expertise, the actual hourly rate of the Land Management staff assigned to provide the required research shall be the hourly rate times 2.42 and shall be charged. Charges will be computed on quarter-hours.

(2) Exceptions. The Director of the Department of Public Works, or his or her designee, may reduce the fee established in LM 60.850, 60.851, 60.852, 60.853, 60.854 and 60.855 when strict adherence to the fee schedule would cause inequity to exist among pending applications, when higher fees result from a staff processing error or when extraordinary circumstances cause strict application of the fee schedule to be inappropriate.

(3) Refunds. All, or a portion, of the fee accompanying an application may be refunded, if the applicant withdraws the application in advance of any field work or substantial staff review.

(4) GIS Output (maps, reports, etc.). A \$50 charge will be made for all maps generated from Land Management Division's geographic information systems.

(5) Investigation Fees.

(a) Investigation. Whenever any activity for which a permit is required pursuant to LM 60.851, and 60.855 has been commenced without first obtaining said permit, a special investigation shall be made before a permit may be issued for such activity.

(b) Fee. An investigation fee, in addition to the permit fee, shall be collected, unless exempted as provided in LM 60.850(2), whether or not a permit is then or subsequently issued. The investigation fee shall be \$300. The payment of such investigation fee shall not exempt any person from compliance with all other provisions of Lane Code and state law, nor from any penalty prescribed by law.

(6) Land Management Division Technology Assessment. A \$10.00 charge will be added to all Land Management Division permit transactions for technology improvements.

(7) Permit Acceleration Fee. A \$75.00/hr processing fee will be charged to individuals wishing to accelerate their Land Management Division Building or Planning Program permit processing. This work will be performed on an overtime basis only, and will not impact ordinary processing times. The option is available only when staff is available for overtime assignments.

(8) Administrative Fee. A 15% administrative fee will be added to all Land Management Division permit transactions.

(9) Long-Range Planning Surcharge. A 5% long-range planning surcharge will be added to all Land Management Division permit transactions.